

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JESSICA ANN TRUJILLO,)	CASE NO. ED CV 10-00153 RZ
)	
Plaintiff,)	
)	MEMORANDUM OPINION
vs.)	AND ORDER
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	
_____)	

This case primarily raises a question of Plaintiff's credibility. The Administrative Law Judge found that Plaintiff had impairments relating to low back problems, as well as chronic pain that, he said, might have been due to fibromyalgia, as well as stress fractures and spurs in her heels. [AR 13] He found that Plaintiff could sit for eight hours [AR 15] — the medical expert had so testified [AR 56] — and therefore could perform her past relevant work of being a receptionist. [AR 22] Plaintiff, however, asserted that she could not sit for that long; in fact, she testified that her pain prevented her from sitting for any appreciable length of time. [AR 61] If Plaintiff is believed, then the Administrative Law Judge erred.

As has long been held, pain is an idiosyncratic phenomenon, and is incapable of measurement with any precision. Pain alone does not entitle a person to receive disability benefits, however. 42 U.S.C. § 423(d)(5)(A). Rather, the pain must be tethered

1 to an impairment for which there is medical evidence. If it is, and if the impairment
2 reasonably can be expected to produce the pain, then the Administrative Law Judge can
3 determine not to believe a claimant only if there is affirmative evidence of malingering, or
4 if he gives specific and legitimate reasons for his disbelief. *Bunnell v. Sullivan*, 947 F.2d
5 341 (9th Cir. 1991) (*en banc*); *Smolen v. Chater*, 80 F.3d 1273 (9th Cir. 1996). In
6 assessing the credibility of a claimant, the Administrative Law Judge may use ordinary
7 techniques for evaluating witnesses and their testimony, *Fair v. Bowen*, 885 F.2d 597, 604
8 (9th Cir. 1989), but he must specify the testimony that he disbelieves, and must explain
9 why. *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996); *Dodrill v. Shalala*, 12 F.3d 915,
10 918 (9th Cir.1993).

11 Although the issue is close in this case, the Court concludes that the
12 Administrative Law Judge did not comply with these rules. To begin with, even though
13 the Plaintiff's testimony as to her ability differed specifically with that of the medical
14 expert, as indicated above, the Administrative Law Judge did not identify this specific
15 testimony as worthy of disbelief. Rather, he included only a general statement (largely
16 boilerplate, found in most administrative denials) that "the claimant's allegations
17 concerning the intensity, persistence and limiting effects of her symptoms are less than
18 fully credible." [AR 17] The particular allegations are not identified.

19 Moreover, assuming that the allegation at issue is the inability to sit for
20 prolonged periods of time, the Administrative Law Judge also did not give sufficient
21 reasons for disbelieving Plaintiff. He said that her allegations were inconsistent with
22 "objective medical evidence which indicates an attempt by the claimant to exaggerate the
23 severity of her symptoms" [*id.*], but, while he recounted the medical evidence in the record
24 [AR 18-21], he did not identify which medical evidence was "objective" and inconsistent
25 with Plaintiff's testimony. Even the medical expert, who had opined (presumably an
26 opinion is not "objective" medical evidence) that Plaintiff could sit for eight hours, stated
27 that pain was subjective, and that there was little correlation between the symptom of pain
28 and what the MRI showed. [AR 57; "Pain is a subjective complaint, and this is an

1 anatomical finding.”] The medical expert also stated that Plaintiff’s degenerative disc
2 disease did not cause *physiological* problems [*id.*]; he did not state, however, that the
3 objective evidence meant that Plaintiff had no pain, or had exaggerated her pain. In fact,
4 the medical expert also testified that Plaintiff’s complaints of pain would be consistent with
5 a diagnosis of fibromyalgia. [AR 58] Thus, the opinion that Plaintiff could sit for eight
6 hours did not take into account Plaintiff’s pain, which the expert nevertheless appeared to
7 acknowledge was real.

8 The vocational expert testified that, if the Plaintiff’s testimony were accepted,
9 and that she would be unable to complete a normal 8 hour work day because of pain, that
10 she could not perform any of her past work. [AR 74] He also testified that there would be
11 no unskilled jobs that she could perform. [AR 75] Thus, under these circumstances, it is
12 appropriate to credit Plaintiff’s statements as true. *Varney v. Secretary of Health and*
13 *Human Services*, 859 F.2d. 1396 (9th Cir. 1988); *see Vasquez v. Astrue*, 576 F.3d 586, 593
14 (9th Cir. 2009). Accordingly, Plaintiff is entitled to receive benefits.

15 In accordance with the foregoing, the decision of the Commissioner is
16 reversed, and the matter is remanded for an award of benefits.

17 IT IS SO ORDERED.

18 DATED: December 1, 2010

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21 
22 RALPH ZAREFSKY
23 UNITED STATES MAGISTRATE JUDGE
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